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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,338	01/17/2001	James Westphal	1313/1E290-US2	7143

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Darby & Darby  
805 Third Avenue  
New York, NY 10022-7513

EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/719,338

Applicant(s)

WESTPHAL ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 19 May 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the acquisition zone of Koczab is not being replaced by the wetlaid acquisition layer of Young. Rather, the teaching of Young to apply a binder to the cellulose fibers of the acquisition layer is being applied to the invention of Koczab. The use of the binder is applicable to the webs regardless of the method of forming the web. Additionally, Koczab discloses in column 4, lines 5-7, that the acquisition layer may be formed from any conventional process.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the applicant's argument that Koczab fails to teach the density gradient, containment layer, and airlaid composition of the storage layer, it is noted that Koczab clearly discloses a density gradient and a containment layer, and the teaching of Hammons is relied upon for the airlaid composition. Koczab teaches varying the density between the acquisition zone 2 and the distribution zone 3, as disclosed in column 4, lines 25-27 and 52-55, thus providing a density gradient. Koczab also teaches a layer 11 that surrounds and contains the fibrous layers, as shown in figure 4, and fulfills the structural limitations of the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koczab (5,879,344) in view of Young et al. (5,217,445).

Koczab discloses all aspects of the claimed invention with the exception of a binder resin in the acquisition zone. Koczab discloses a unitary absorbent structure, as shown in figure 3, comprising an upper fibrous layer having a liquid acquisition zone 2 and a liquid distribution zone 3, as shown in figure 4. The structure further comprises a

lower fibrous liquid storage layer 12 in fluid communication with the distribution zone 3. The storage layer 12 comprises superabsorbent polymer particles, as disclosed in column 6, line 63. A containment layer 11 surrounds the storage layer 12 and is sealed to at least one edge of the upper fibrous layer, as shown in figure 4. Koczab discloses in column 3, line 66, the liquid acquisition zone 2 comprises cellulose fibers, but remains silent as to the presence of a binder resin.

Young discloses an upper fibrous acquisition zone comprising cellulose fibers, as described in column 4, lines 34-38, and a binder resin, as described in column 4, lines 27-30. The binder resin provides the acquisition zone with an increased physical integrity which improves performance, as disclosed in column 4, lines 30-34.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the acquisition zone of Koczab with a binder resin, as taught by Young, to provide increased physical integrity to the acquisition zone.

With respect to claim 2, Koczab discloses the upper fibrous layer is airlaid, as disclosed in column 4, line 8. The acquisition zone 2 has a lower density than the distribution zone 3, as disclosed in column 4, lines 25-27 and 52-55.

With respect to claim 5, Koczab discloses the containment layer 11 is sealed to the distribution zone 3, as disclosed in column 5, lines 41-43.

With respect to claim 6, Koczab discloses the containment layer 11 is sealed to the storage layer 12, as disclosed in column 5, lines 1-2.

With respect to claims 7 and 8, Koczab discloses all aspects of the claimed invention but remains silent as to the composition of the containment layer 11. The

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containment layer 11 functions as the liquid-impermeable backsheet of the absorbent article disclosed by Koczab. It is well-known in the art to construct a liquid-impermeable backsheet of a thermoplastic film, such as polyethylene or polypropylene, because these materials offer suitable liquid barrier properties. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the containment layer 11 of Koczab from a thermoplastic film to provide suitable liquid barrier properties.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koczab (5,879,344) in view of Young et al. (5,217,445), and further in view of Hammons et al. (H1657).

Koczab, as modified by Young, discloses all aspects of the claimed invention but remains silent as to the composition of the storage layer 12.

Hammons discloses a unitary absorbent structure comprising a lower fibrous liquid storage structure 24, as shown in figure 1. The storage layer 24 comprises an airfelt layer mixed with superabsorbent polymer particles, as disclosed in column 8, lines 49-57. The airfelt layer has a smaller pore size than the acquisition layer 22, which allows the storage structure 24 to suction liquids from the acquisition layer, as disclosed in column 8, lines 35-43.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the storage layer of Koczab from an airlaid layer, as taught by Hammons, to allow the storage structure to suction liquids from the acquisition layer.

With respect to claim 9, airfelt comprises, by definition, a plurality of bonded fibers, and therefore the airfelt layer of Hammons is lightly bonded.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CWA  
cla

August 2, 2005

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**

